

HOUSE No. 1904

By Representative Scibak of South Hadley and Senator Joyce, joint petition of John W. Scibak and others that the Department of Mental Retardation be authorized to establish Level IV behavioral treatment interventions. Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

PETITION OF:

John W. Scibak	Steven J. D'Amico
Brian A. Joyce	Kay Khan
Barbara A. L'Italien	Harold P. Naughton, Jr.
William N. Brownsberger	Alice Hanlon Peisch
Tom Sannicandro	Anthony J. Verga
Viriato Manuel deMacedo	David B. Sullivan
Mary E. Grant	Charles A. Murphy
James R. Miceli	Thomas P. Conroy
Frank I. Smizik	Cleon H. Turner
Carl M. Sciortino, Jr.	

In the Year Two Thousand and Seven.

AN ACT CREATING AND AUTHORIZING LEVEL IV BEHAVIORAL TREATMENT INTERVENTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Department of Mental Retardation hereby creates a new classification of behavioral treatment interventions, to be known as Level IV. Level IV interventions involve the most intrusive form of treatment intervention and they shall be considered to only be used as a consequence to address target behaviors which present a clear risk of injury or harm to self or others, such as self-injury, aggression. Level IV interventions are not appropriate for addressing minor behavior problems, even if said behaviors have served as precursors to self-injury or aggression in the past.

1 SECTION 2. Level IV interventions shall include those procedures which involve the systematic use of noxious or intrusive stimuli which a client is known to find painful or unpleasant. These

4 interventions are restricted to techniques and procedures which meet
5 scientifically validated standards, have been published in peer-
6 reviewed journals, and are consistent with the 2004 amendments to
7 the Individuals with Disabilities Education Act (IDEA) No Child
8 Left Behind Act. These will include, but not be limited to: use of
9 contingent electric shock, corporal punishment, aromatic ammonia,
10 Tabasco sauce, etc.

1 SECTION 3. All Level IV interventions must be designed by a
2 Board Certified Behavior Analyst or a Licensed Psychologist who
3 holds a Board Certification by the American Board of Professional
4 Psychology as a Board Certified Behavioral Psychologist. Level IV
5 interventions may only be implemented by staff who received spe-
6 cific training in the application of the intervention and the individu-
7 alized treatment plan. Any staff member who is not, at a minimum,
8 a Board Certified Associate Behavior Analyst can only implement a
9 Level IV intervention under the direct observation and supervision
10 of a professional who holds said certification.

1 SECTION 4. The governor will appoint three licensed behavior
2 analysts who are also licensed psychologists with appropriate clin-
3 ical expertise to serve as a single state-wide Peer Review Committee
4 which would be charged with the review, approval and oversight of
5 all Level IV treatment interventions occurring in the Common-
6 wealth. All recommendations and findings of the Peer Review
7 Committee with respect to any individual treatment plan will be sub-
8 mitted to the Probate and Family Court as part of the approval and
9 review of said substituted judgment treatment plan. In any civil
10 action brought against a member, the Peer Review Committee shall
11 be indemnified for all expenses incurred in the defense thereof and
12 shall be indemnified for damages to the same extent as provided for
13 public employees in chapter two hundred and fifty-eight; provided,
14 however, that the claim arose out of acts performed by such member
15 while acting within the scope of his official duties as a member of
16 the Peer Review Committee.

1 SECTION 5. Level IV interventions are permitted only when
2 authorized as part of a court-ordered “substituted judgment” treat-
3 ment plan for an individual client. Such interventions will be ini-

4 tially approved for no more than 30 days by the state-wide Peer
5 Review Committee, and may be re-reviewed and approved for a
6 maximum of six months.

1 SECTION 6. The implementation of any Level IV intervention
2 beyond the scope of a court-ordered “substituted judgment” treat-
3 ment plan or by a staff member who does not meet the requirements
4 of this section will be considered an act of mistreatment, pursuant to
5 section 13K of chapter 265 and shall be reported to the Disabled Per-
6 sons Protection Commission.

1 SECTION 7. Within 90 days after the passage of this act, the sec-
2 retary of health and human services shall draft, pursuant to chapter
3 30A, proposed rules and regulations regarding the development,
4 review, approval, and on-going review and monitoring process for
5 Level IV treatment plans.